IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 1735 of 1995

Date of decision: 01.11.2006

The Oriental Insurance Co. Ltd.

..... Appellant.

Versus

Harpal Singh and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. R.C. Gupta, Advocate for
Mr. Pradeep Bedi, Advocate
for the appellant.

None for the respondents.

P.S. PATWALIA, J. (ORAL)

This order will dispose of FAO Nos. 1735, 1736 and 1760 of 1995 filed by the Insurance Company, which have arisen out of the same accident. For facility of reference facts are being taken from FAO No. 1735 of 1995.

The only argument raised by the learned counsel for the appellant in support of present first appeal is that the driving licence of Pakhar Singh was fake and hence the Insurance Company is entitled to be

given liberty to proceed against the owner of the Tractor for recovery of the amount of compensation awarded by the Tribunal. For this submission learned counsel has relied upon judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Swaran Singh and Ors. JT 2004 (1) SC 109. The relevant observations to this effect in the said judgment which have been pressed into service are as hereunder:-

> **"When admittedly no licence was obtained by a Driver:**
>
> We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g. a case where an accident takes place owing to a mechanical fault or vis-major.

Summary of findings:

(ii)....Insurer is entitled to raise a defence in a claim petitions filed under section 163A or section 166 of the Motor Vehicles Act 1988 inter alia in terms of section 149(2)(a)(ii) of the said Act.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."

A reading of the aforesaid judgment would show that the Insurance Company can avoid its liability if it proves that the driving licence is fake or invalid and further that the insured was guilty of negligence and failed to exercise reasonable care in permitting the vehicle to be driven by a person having a fake or invalid driving licence.

In the present case it has been found by the Tribunal that the driving licence held by the driver at the time of the accident had been validly renewed by the office of District Transport Office Sangrur. A verification report Ex.RW2/A from the office of Licensing Authority

Sangrur to the effect that the driving licence had neither been issued nor renewed by the office of District Transport Office Sangrur was considered but rejected. It was found that there are signatures of Mr. J.S. Bal, the then District Transport Officer, Sangrur on the renewal of the licence. The relevant findings of the Tribunal are as hereunder:-

> "Pakhar Singh respondent No.3 driver of the tractor, when appeared as RW1 produced and proved his driving licence Ex.R1 and stated that it was a valid licence and was issued by the Licensing Authority, Sangrur i.e. District Transport Officer, Sangrur, vide no. 1562/DTO Sangrur. The perusel of the licence Ex.R1 shows that it was renewed from 16.5.88 to 16.6.1991 and then it was renewed from 16.6.91 to 15.6.1994. The learned counsel for the respondent No.4 Insurance Company, contended that it is not a valid document. He produced and proved the verification Ex.RW2/A from the office of the Licensing Authority, Sangrur, to the effect that driving licence No. 1562/DTO/Sangrur, in the name of Pakhar Singh son of Teja Singh, had neither been issued nor been renewed by that office. Shri Darshan Kumar Gupta, learned counsel for the respondent No.4 on the basis of this verification of the licensing Authority contended that driving licence Ex.R1 produced by Pakhar Singh is fake and insurance company is not liable to pay any compensation. He also examined Parminderpal Singh, an official from the office of District Transport Officer, Sangrur, as RW2, who stated that he has brought the summoned record and licence No. 1562/DTO/Sangrur, was not issued by their office nor it was

renewed on 16.5.1988. He admitted that verification Ex.RW2/A is correct. The learned counsel contended that statement of RW2 proves that the licence Ex.R1 is fake on the other hand the leaned counsel for the respondents No.1 to 3 contended that licence Ex.R1 is not fake and it was validly issued. He contended that it was subsequently renewed up to 15.6.1994 from 16.6.1991. I have considered the rival contentions. Parminder Pal Singh RW2 in his cross examination revealed that he cannot say whether licence Ex.R1 bears the signatures of Shri J. Bal, then District Transport Officer or not. He further stated that he has not brought the record pertaining to the period of Sh. J.S. Bal, DTO, but he admitted that on Ex.R1 (driving licence) at point Mark A there are signatures of Shri J.S. Bal, the then District Transport Officer, Sangrur, though he tried to say in next breath that signatures of Mr. Gupta have been forged on it. Vide entry at Mark A in Ex.R1, the licence was renewed from 16.5.1988 to 16.6.1991. The signatures of Shri J.S. Bal, District Transport Officer are admitted thereon by Parminderpal Singh Clerk, RW2, who remained posted in that office. Not only this, this witness further revealed that he has not brought the record of licence No. 18960 RA 1986 in respect of Pakhar Singh. He admitted that at the time of renewal of licence, entry is made in the register and he has not brought the record-register regarding renewal of licences dated 16.5.1988 nor he brought the renewal entry dated 16.6.1991 and be only brought the record regarding issuance of fresh licences. He admitted that in

verification report Ex.RW2/A, it is not recorded that the licence is fake or forged. What transpired is that the licence Ex.R1 was duly renewed by the office of District Transport Office, Sangrur, from 16.5.1988 to 16.6.1991 and then from 16.6.1991 to onwards."

In the face of these findings it is not possible to accept the contention of the learned counsel for the Insurance Company that its liability can be avoided. Since the driving licence has been found to be renewed by the office of District Transport Officer, Sangrur the present case cannot be said to be one where the insured was guilty of negligence and failed to exercise reasonable care in permitting such a person to drive the vehicle. In the aforementioned facts, I find no merit in the first appeal and the same is accordingly dismissed.

November 01, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**